GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT.

Labour Dispute:—Industrial Dispute between the Workmen and the Management of Bellary Spinning and Weaving Mills Ltd., Bellary.

Award of the Labour Court, Hubli,—Published.

Read the following papers : –

1. Letter No. 120/71-72, dated 15th—21st April 1971 from Sri W. K. Kulkarni, Presiding Officer, Labour Court, Hubli.

BEFORE THE LABOUR COURT AT HUBLI.

Reference (ID) (LCH) Claim No. 3/1970.

Sri W. K. Kulkarni, B.A. (Hons), LL.B., Presiding Officer

Dated 6th April 1971.

Claimant :

Sri A. K. Nagaraj, his cause sponsored by the workman of Bellary Spinning and Weaving Mills Employees' Association, Bellary.

Respondent :

The Management of Bellary Spinning and Weaving Mills Ltd., Bellary.

1. This is a reference made by the State Government U/s 10(1)(c) of the I.D. Act 1947 which will be, hereinafter, referred to as the Act. The facts leading to this Dispute may be stated in brief as following :

The claimant Nagaraj is a holder of Diploma in Mechanical Engineering. He was employed by the Respondent. At first he was an Apprentice. Letter from 1st January 1969, he was appointed on probation. All of a sudden, his services were terminated by the Respondent on 16th February 1970. According to the claiment Nagraj, he had satisfactorily completed the probation of 6 months and thus he had become a prmanent employee and the

termination of his services is illegal and arbitrary. After the termination, he issued a notice to the Respondent which is the Bellary Spinning and Weaving Mills Ltd., Bellary as per Ex. W-4 on 19th February 1970. He contended in this Notice that his termination was illegal and he asked for re-instatement and also compensation for wrongful dismissal. He received unfavourable reply as per Ex. W-5 Then he approached the Labour Officer for conciliation, but the Conciliation Proceedings failed and on the report of the Conciliation Officer, the State Government has made this Reference.

3. The Respondent has filed a written statement raising several contentions. The claimant is examined as WW-1 and on behalf of the Respondent, its Accountent Narayanarao Sunkad is examined as MW-1. Several documents are marked as exhibits on both the sides and I have heard the learned Advocates appearing on both sides.

4. The main contention of the Respondent is that the claimant Nagraj was only probationer when his services were terminated on 16th February 1970 and during the period of probation, the Respondent Management had every right to terminate the services of Nagraj and as such Nagraj can neither ask for re-instatement nor for any compensation. That the termination of his services is perfectly legal.

5. It is admitted by both the sides that the claimant Nagraj was appointed as Apprentice Supervisor from 25th Marh 1968 on a stipend of Rs. 75 p.m. But the Respondent admits that he was kept on probation from 1st January 1969. A true copy of the Standing Orders governing the Respondent and its workers is produced and marked as Ex. W-9. Clause 3 (b) of the Standing Orders contains the definition of a permanent workman as "A workman who has been engaged on a permanent basis and includes any person who has satisfactorily completed probationary period of six months in the same or another occupation in the Industrial Establishment." Then clause 3(c) defines as "probationer" as a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed six months service therein. "On an interpretation of these two definitions, we have to see whether after 1st July 1969 Nagraj was still a probationer or must be deemed to have been made permanent. Respondent contends in its written statement that he was a probationer till his services

were terminated on 16th February 1970. But Narayan Rao MW1-stated in his examination chief para 1'. His (claimant's) proba. tion was completed by the time his services were terminated- "This can only mean that Nagraj had already completed his probation period when his services were terminated. Now under cannot the difinition of 'probationer' in this Standing Orders, Nagraj be a probationer after 1st July 1969. I think he must be deemed to have become permanent from 1st July 1969 under the definition of a permanent workman in clause 3(b) of standing Orders. In the written statement the Respondent did not make any specific allegation that the work of the claimant was unsatisfactory during the period of first 6 months of probation and so he was not confirmed. Nor did Narayana Rao who has been examined for the Resp ndent state in his evidence anywhere that the work of the claimant was unsatisfactory at any time. In the claim statement Nagraj alleged that he had worked all through to the satisfaction of the Respondent. Thus if his work was not unsatisfactory during the 6 months from 1st January 1969, then he automatically become a permanent workman. The fact that the Respondent did not pass any written order that Nagraj was made permanent after 6 months is of no consequence. As I stated earlier Respondent at no time told claimant that his work was unsatisfactory. So it must be deemed that his work was satisfactory during the period of probation of 6 months and he automatically become a permanent workman. Sri Cadapakar, the learned advocate for the Respondent, relied upon Express Newspapers, Ltd., and Labour Court, Madras, and others 1964 (1) LLJ P. 9 in which their Lordships of Supreme Court have observed that after the period of probation, if a worker is continued in service without making him permanent, he would continue to be probationer. I have carefully read this judgement. But in that case it appears the case of the worker was not governed by any Standing Orders. In the absence of the existence of the Standing Order, the judgement of Supreme Court would have been definitely relevant and applicable. But in the present case, we have got standing Orders which have statutory force and bind both the parties. And whether Nagraj become a permanent worker or not after 1st July 1969, has to be determined only from the definition of 'permanent workman' and 'probationer' as contained in the Standing Orders. We have to bear in mind that the record would always remain with the Management, the worker cannot compel the management to pass any order or to create any record. In the present case admittedly

no written order of appointment was issued to Nagraj either at the time of Apprenticeship or when he was appointed on probation on 1st January 1969. These were all oral orders. As I stated earlier the Respondent never told Nagraj at any time that the work of Nagraj was unsatisfactory during the first 6 months. Under these circumstances the Respondent cannot say that the period of probation continued even after 6 months merely because no written order was passed by the Management making Nagraj permanent. In my opinion even in the absence of any written order making Nagraj permanent, it is open to him to contend that he became permanent by virtue of the Standing Orders and this is what he is doing Similarly it is not necessary for the Management to pass an order saying that the work of Nagraj was satisfactory during the first 6 months. If the Management had passed written order that the work of Nagraj was found unsatisfactory during 6 months and his work required further observation and so his period of probation was extended, then perhaps it could have been possible to say that Nagraj was still a probationer. But nothing of this sort is done by the Management. Under these circumstances it will have pressumed that his work was staisfactory during the probation of 6 months and he automatically became permanent at the end of 6 months by virtue of the Standing Orders. Otherwise the Standing Orders will be of no assistance to the worker and he will be at the mercy of the Management, which may contend anything without making any record at the proper time. Sri Narayana Rao MW-1 stated in his evidence that after 6 months the probation of Nagraj was extended. He did not even say as to by what period it was extended. No such order was passed any time by the Management. Narayana Rao further admitted that the probation period of Nagraj was completed by the time his services were terminated. This would mean that Nagraj was no more a probationer at the time his services were terminated. In this behalf Sri Mannar the learned Advocate for the claimant has referred me to Jagidish Mittra Sbrma, V/s Jivajee Rao Cotton Mills Ltd., and others, 1969 LAB 123 wherein the implications of similar standing orders have been discussed. He also relied upon Behar Journals, Ltd. *V/s* Ali Hasan & another AIR 1969 Patna 431 wherein it has been laid down that certified Standing Orders have force of statutory contracts and workman cannot be appointed on conditions of service different from that contained in the Standing Orders.

6. The result of my above discussion is that Nagraj become a permanent servant after 1st January 1969 and it is admitted by

the Respondent that the statutory provisions of Section 25 F of the I. D. Act were not followed while terminating the services of the claimant. He had already completed 1 year's service and still no retrenchment compensation was given to him. In fact the Respondent does not at all contend that this was a case of retenchment. As the provisions contained in Section 25 F were not followed and no opportunity was given to Nagraj before terminating his services, the termination of his services is illegal and liable to be set aside. Then Sri Cadapakar contented that on 1st July 1969 Nagaraj was not yet issued the Licenciate Certificate in Diploma Course by the Director of Technical Education and hence he could not be become a permanent employee on that date. It appears that after a candidate passes the Diploma Examination, the Director of Technical Education insists on the candidate to work as an Apprentice for 6 months in some establishments by way of experience before the Licenciate Certificate is issued. Nagaraj admitted in his cross-examination that he received licenciate certificate in February 1970 but he already had 6 months experience by 1st July 1969. It was not necessary that the Licenciate Certificate was actually issued to him before he could be made permanent.

7. Thus the termination of the services of Nagaraj is illegal. He however stated that he does not now press for reinstatement because he is already employed in the Railways as a Probationer Assistant Station Master since 2nd November 1970. So he has only pressed for compensation for wrongful dismissal. Nagaraj was being paid at the rate of Rs. 150 p. m. eversince 1st January 1969 till termination. He was out of employment for about 8½ months. Thus Sri Mannar for the claimant asked for compensation on the basis of salary for 8½ months. It is true that in the first instance the Respondent accommodated the claimant by taking him as an Apprentice on 25th March 1968 on a stipend of Rs. 75 p. m and this apprenticeship came to an end by the end of December 1968. It was open to the Respondent not to appoint Nagraj as a probationer from 1st January 1969 but it did so, and it did treat him as a Supervisor. He was designated as a Supervisor The claimant has produced some documents of the Respondent in which he is described as a Supervisor *vide* Ex. W-2, W-3 and Ex. W-8. Thus the status of Nagraj was, that of a Supervisor. Under the Standing Orders, he must be deemed to to have become permanent. Taking into consideration the fact that in the earlier period the Management accommodated Nagraj to give him experience, I think the compensation for wrongful

dismissal should be minimised to some extent. Of course the claimant must have been put to some expenses in getting the present job for example travel for interview and also he must have been required to spend some money for this litigation. Taking into consideration all these circumstances, I fix the compensation at Rs. 800. In the claim statement the claimant has asked for difference of salary on the basis that he should have been paid at the rate of Rs. 200 p. m. from 1st January 1969 till 28th February 1970. This claim is obviously untenable The salary was a matter of contract between the claimant and the Management and the claimant agreed only for Rs. 150 p.m. Now he cannot be allowed to turn round and say that he should have been paid at the rate of Rs. 200 p. m., because other supervisors were being paid at that rate. I reject this item of claim from the claim statement. However he will be entitled to compensation of Rs. 800 for wrongful dismissal as discussed above. Hence my award.

AWARD.

8. The termination of services of the claimant Nagraj by the Respondent Management is illegal. Since at the hearing, the claimant does not press for reinstatement on the ground that he has secured another job meanwhile, it is not necessary to pass an order of his reinstatement. However the Respondent Management will pay to the claimant Nagraj compensation of Rs. 800 for his wrongful termination of services. There will be no orders as to costs of this proceeding.

W. K. KULKARNI,
Presiding Officer,
Labour Court, Hubli.